Supreme Court, U. S.
FILED
OCT 14 1980
MICHAEL RODAK, JR., CLERK

No. 80-394

In the Supreme Court of the United States

OCTOBER TERM, 1980

HENRY EARL SHRIVER,
Petitioner,

VERSUS

THE STATE OF OKLAHOMA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

RESPONSE BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

JAN ERIC CARTWRIGHT
Attorney General of Oklahoma

DANNY K. SHADID
Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-3921

Attorneys for Respondent

October, 1980

ISSUES PRESENTED

1. Whether a claim that the prosecutor in a state criminal trial violated an alleged promise of his assistants during plea negotiations not to use certain matters discussed therein presents a substantial federal question where the evidence in question supported petitioner's theory of defense?

2. Whether petitioner's claim that the prosecutor violated an alleged promise of his assistants during plea negotiations necessitated an evidentiary hearing beyond the in chambers hearing held before the trial judge?

TABLE OF CONTENTS

	PAGE
JURISDICTION	1
ISSUES PRESENTED	i
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	2
ARGUMENT	5
I. A claim that the prosecutor in a State criminal trial violated an alleged promise of his assistants during plea negotiations not to use certain matters discussed therein, does not present a substantial Federal question where the evidence in question supported petitioner's theory of defense and, therefore, could not have been unfairly prejudicial	5
II. Petitioner's claim that the prosecutor violated an alleged promise of his assistants during plea negotiations did not necessitate an evidentiary hearing beyond the in chambers hearing held before the trial judge	7
CONCLUSION	11

AFFIDAVIT OF SERVICE follows Brief.

APPENDIX

Affidavit of Andrew Coats	A-1
Affidavit of James P. Laurence	A-3
Affidavit of Larry E. Joplin	A-5
Affidavit of Kenneth R. Smith	A-6
Affidavit of Charles Acox	A-7

TABLE OF AUTHORITIES

Cases PAGE

Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) 8

Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963) 5

Nardone v. United States, 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307 (1939) 9

Sniadach v. Family Finance Corporation, 395 U.S 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) 8

United States v. Falley, 489 F.2d 33 (2d Cir. 1973) 9, 10

United States v. Robertson, 582 F.2d 1356 (5th Cir. 1978) 8

United States v. Ross, 493 F.2d 771 (5th Cir. 1974) 7

United States v. Smith, 525 F.2d 1017 (10th Cir. 1975) 7

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) 10

Statutes

28 U.S.C. § 1257(3) 2

Okla. Stat. tit. 21, § 381 (1971) 2

Miscellaneous

Supreme Court Rules, Rule 19 5

No. 80-394

In the Supreme Court of the United States

OCTOBER TERM, 1980

HENRY EARL SHRIVER,
Petitioner,

VERSUS

THE STATE OF OKLAHOMA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS FOR THE STATE OF OKLAHOMA

RESPONSE BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

COMES NOW the State of Oklahoma, by and through its attorneys, Jan Eric Cartwright, Attorney General of the State of Oklahoma, and Danny K. Shadid, Assistant Attorney General, and for Answer to the Petition for Writ of Certiorari submits to this Honorable Court the following brief in opposition thereto.

JURISDICTION

Petitioner seeks review by way of Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals, pursuant to 28 U.S.C. §1257(3). On May 13, 1980, the aforesaid court issued its opinion affirming petitioner's convic-

tion in the District Court of Oklahoma County, Oklahoma, Case No. F-78-518. Petitioner now seeks direct review of the Oklahoma Court of Criminal Appeals' decision.

STATEMENT OF THE CASE

Petitioner, Henry Earl Shriver, was charged by Information in Case No. CRF-77-3144 with the crime of Bribery of a Public Official, pursuant to Okla.Stat. tit. 21, § 381 (1971) in the District Court of Oklahoma County, Oklahoma. Petitioner was tried by jury and represented by counsel. The jury found petitioner guilty and punishment was set at imprisonment in the Oklahoma County Jail for a period of one (1) year and a fine of Three Thousand ($3,000.00) Dollars. Petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction in an opinion rendered on May 13, 1980. Petitioner now seeks review by this Court by means of his Petition for Writ of Certiorari.

STATEMENT OF THE FACTS

Petitioner was charged with bribing a Mr. Roy Melton, former Deputy County Assessor for Oklahoma County. Specifically, petitioner was accused of paying Melton Eight Hundred ($800.00) Dollars in February, 1977, in return for a reduction in ad valorem taxes on his home and two commercial buildings. Petitioner acknowledged the transaction but claimed that it was merely one of several loans that petitioner had made to Melton over a period of years dating back to 1968. The evidence showed that, in fact, ad valorem taxes on petitioner's real estate holdings had been reduced during the years 1974, 1975, and 1976.

During the trial, the prosecution attempted to introduce testimony regarding a subsequent Fifteen Hundred ($1,500.00) Dollar loan from petitioner to Melton in May or June, 1977. Petitioner objected and an *in camera* hearing was held. While in chambers, petitioner objected to the introduction of such evidence on the ground that the District Attorney's assistants had, within the few days preceding trial, been involved in plea negotiations with petitioner's counsel. According to petitioner, a meeting was held on Friday, February 3, 1977, with Assistant District Attorneys Jim Laurence and Larry Joplin, and Police Detective Charles Acox. Petitioner's counsel told the court that the prosecutors promised that nothing divulged during the negotiation session would be used against petitioner. During that session there was reference to the subsequent $1,500.00 transaction, counsel told the court.

Counsel went on to explain that the following Sunday, February 5, 1977, a second meeting was held with Detective Acox and Detective Kenneth Smith. Again, the $1,-500.00 transaction was discussed, according to counsel. The next day, plea negotiations were terminated.

In response, District Attorney Andrew Coats told the court that he was not a party to any such agreement and that he learned of the $1,500.00 transaction independently from Roy Melton. Mr. Laurence added that he did not recall discussing any specific transaction involving a dollar amount, but rather, only an overall course of conduct. To avoid unnecessary duplication, respondent would cite the Court to Appendix C of petitioner's Petition for a transcription of the pertinent portion of the *in camera* hearing. Additionally, upon the petitioner's Motion for New Trial,

affidavits of all state officials involved or remotely involved were submitted to the trial court. The officers denied absolutely that any agreement was made regarding the disclosure of the $1,500.00 loan. The affidavits are attached hereto as an Appendix.

Upon conclusion of the hearing, petitioner's objection was overruled and the evidence was admitted via the testimony of Roy Melton. The next day, petitioner acknowledged the $1,500.00 transaction on cross-examination by the District Attorney. At no time were there any references to the plea negotiations. Neither were any statements made by petitioner personally or through counsel ever admitted against petitioner.

The Oklahoma Court of Criminal Appeals, in affirming petitioner's conviction, held that (1) the State is not precluded "from proving material, relevant facts from independent evidence and sources, even though those facts were discussed during plea negotiations"; and (2) that the testimony objected to by petitioner was admissible regardless of the plea negotiations. In view of this holding, the Court of Criminal Appeals did not reach the question of whether an evidentiary hearing was necessary. Again, for purposes of avoiding unnecessary duplication, respondent would cite the Court to Appendix A of petitioner's Petition for reference to the opinion handed down by the Oklahoma Court of Criminal Appeals.

ARGUMENT

I. A CLAIM THAT THE PROSECUTOR IN A STATE CRIMINAL TRIAL VIOLATED AN ALLEGED PROMISE OF HIS ASSISTANTS DURING PLEA NEGOTIATIONS NOT TO USE CERTAIN MATTERS DISCUSSED THEREIN, DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION WHERE THE EVIDENCE IN QUESTION SUPPORTED PETITIONER'S THEORY OF DEFENSE AND, THEREFORE, COULD NOT HAVE BEEN UNFAIRLY PREJUDICIAL.

Petitioner seeks review by this Court upon a claim that he was denied due process under the Fourteenth Amendment of the United States Constitution. Respondent submits that the Petition should be denied, initially, for lack of a substantial federal question. Rule 19 of the Supreme Court Rules provides in pertinent part:

> "A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor."

The Court has recognized this provision as forming the basis for granting writs of certiorari. *See Fay* v. *Noia*, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). Respondent submits that, in light of the facts of this case, there exists no substantial question.

In the present case, petitioner claims a lack of due process as a result of the trial court refusing to hold an "evidentiary" hearing concerning the alleged disclosures and promises made during plea negotiations. Respondent contends, however, that the trial court held a sufficient hearing. The record reveals that upon petitioner's objec-

tion to any reference to the $1,500.00 loan, an *in camera* hearing was held. The trial court heard a rendition of the pertinent facts regarding the plea negotiations from both sides. Moreover, the situation herein is somewhat unique in that three of the most crucial witnesses who would have testified in an "evidentiary" hearing, *i.e.*, District Attorney Andrew Coats, Assistant District Attorney James Laurence, and defense counsel Stephen Jones, were all present at the *in camera* hearing. All basically told their versions of what happened and how the $1,500.00 loan came to light. As officers of the court, there is no reason to believe that they would have told the court anything different if they had formally "testified." Respondent submits that the trial court conducted a sufficient inquiry into the question presented at trial and that petitioner has failed to show that anything more would have been more effective. For all intents and purposes, petitioner was given his hearing.

Furthermore, respondent submits that the evidence of which petitioner now complains could not have been prejudicial in that, if anything, it supported petitioner's theory of defense. Throughout the trial, petitioner attempted to show that he had routinely made loans to Roy Melton over a period of ten years. Evidence that defendant had made a loan of Fifteen Hundred ($1,500.00) Dollars to Roy Melton in May or June, 1977, simply paralleled petitioner's own evidence and theory of the case. It could in no way have prejudiced petitioner. Absent a showing of substantial prejudice, certiorari should be denied.

Respondent submits that petitioner has failed to show that the inquiry conducted by the trial court was not sufficient. In any event, the evidence in question could have

only substantiated petitioner's theory of the case; petitioner has certainly shown no prejudice from the admission of such evidence.

II. PETITIONER'S CLAIM THAT THE PROSECUTOR VIOLATED AN ALLEGED PROMISE OF HIS ASSISTANTS DURING PLEA NEGOTIATIONS DID NOT NECESSITATE AN EVIDENTIARY HEARING BEYOND THE IN CHAMBERS HEARING HELD BEFORE THE TRIAL JUDGE.

Initially, respondent would point out that the pertinent rule applicable to this case is that only *statements* made by a defendant during the course of plea negotiations cannot be used against him at trial. Petitioner's own authorities support this view. *See United States* v. *Smith,* 525 F.2d 1017 (10th Cir. 1975); *United States* v. *Ross,* 493 F.2d 771 (5th Cir. 1974). However, there is nothing preventing the State from proving, by means of other evidence or sources, the underlying questions of fact which are discussed during the plea negotiations. Petitioner concedes this point. *See* petitioner's Petition at p. 9.

Petitioner's sole claim is that the trial court should have conducted an evidentiary hearing regarding the scope of plea negotiations. In support, petitioner cites various cases wherein it has been held that hearings should be conducted to determine the voluntariness of a confession, the state's refusal to appoint counsel, the possibility of a physically coerced confession, the veracity of an affidavit in support of a search warrant, and the like. However, such cases involved fundamental rights emanating from the Fourth, Fifth, or Sixth Amendments and were made ap-

plicable to the states via the Fourteenth Amendment. Petitioner attempts to equate hearings on a fundamental right with a hearing on a question of admissibility of evidence which arises, not from a constitutional guarantee, but from public policy concerns.

Petitioner also relies on a series of cases wherein this Court has required that a hearing be conducted in various situations where a civil litigant is placed in a position of being deprived of a liberty or property interest. *E.g., Sniadach* v. *Family Finance Corporation,* 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969) (where the Court held that a hearing be held prior to pre-judgment garnishment); *Armstrong* v. *Manzo,* 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (where the Court held that a father must be given notice of a hearing wherein custody of his child is at issue).

Again, there is no parallel. The cases cited by petitioner deal with the requirement of a hearing prior to the deprivation of a property or liberty interest. In the present case, petitioner's trial constituted the hearing prior to the decree that he be deprived of liberty and property. He now attempts to equate hearings on the merits of an entire case with a hearing on the admissibility of evidence. A property or liberty interest cannot be equated with such a question of admissibility.

Petitioner cannot point to a single example of where, even in plea negotiation settings, a full "evidentiary" hearing is mandated by due process. Petitioner relies, in part, on *United States* v. *Robertson,* 582 F.2d 1356 (5th Cir. 1978). There, the question revolved around a determination as to whether a certain discussion constituted, in fact, a plea ne-

gotiation. However, *Robertson* never suggests that an evidentiary hearing be conducted. Rather, the trial court is charged with merely making an "inquiry" as to a defendant's "subjective expectation to negotiate a plea" and as to "whether the accused's expectation was reasonable" under the circumstances. *Robertson* does not provide the extent of such an inquiry, so long as the trial court can satisfy itself under the standards provided. Petitioner's assertion that there exists a *requirement* of an evidentiary hearing is without support. At most, the trial court is bound to make an "inquiry."

Petitioner relies on *Nardone* v. *United States*, 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307 (1939). However, petitioner's reliance is misplaced. *Nardone* dealt with a situation wherein evidence had been obtained by means of wiretapping, contrary to a Congressional prohibition. On re-trial, the Government had apparently used the illegally obtained evidence to obtain additional evidence. The question presented was whether the defendant should have been allowed to inquire as to what "use" the Government had made of the illegally obtained evidence. The Supreme Court made it clear that the Congressional prohibition went not only to the use of such evidence before a court, but extended to any use whatsoever. *Nardone* dealt with the wrongful acquisition of evidence at the outset. The present case does not. Yet, it is interesting to note that the Court in *Nardone* never makes reference to the need for an "evidentiary" hearing, but only an inquiry.

Petitioner also relies on *United States* v. *Falley*, 489 F.2d 33 (2d Cir. 1973), in support of his position that a hearing is required even when the prosecutor claims that

the controversial evidence came into his grasp through an independent source. *Falley* involved convictions for conspiracy to violate federal drug laws. Among the questions presented therein was whether certain evidence should be suppressed due to its alleged discovery as a result of an illegal search and seizure. The defendants had claimed that the unlawful search led to a more extensive investigation and, thus, the discovery of additional incriminating evidence. In addressing the issue, the Court of Appeals recognized that the "fruits of the poisonous tree" doctrine arising from *Wong Sun* v. *United States,* 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963), does not preclude the introduction of evidence sufficiently remote from the unlawful act. As the Court noted, "[i]t would have been only a question of time before the Government by a so-called saturation investigation, or otherwise, would have discovered the broker and the importation documents." *United States* v. *Falley,* supra at 40.

It is important to note that in resolving the issue in *Falley,* the Court of Appeals never required that a full "evidentiary" hearing be held on the question of admissibility of evidence obtained from an independent source, where that evidence might otherwise be inadmissible. Rather, the Court said that only an "inquiry" need be made as to the cause of the investigation leading to the discovery of the incriminating evidence.

In the present case, there was an inquiry. Indeed, as noted previously, the same persons who would have testified in an "evidentiary" hearing voiced their respective versions of the controversy to the court as officers of the court. Respondent submits that the *in camera* hearing in

and of itself was a sufficient inquiry as to the issues presented. There is no reason to believe that anything different would have been said had the hearing been labeled "evidentiary."

CONCLUSION

Respondent submits that petitioner cannot show a substantial federal question in light of the *in camera* hearing, the parties involved in the hearing, and the total lack of prejudice in view of the fact that the evidence in question supported petitioner's theory of defense. Wherefore, respondent State of Oklahoma respectfully urges this Honorable Court deny petitioner's request for writ of certiorari.

Respectfully submitted,

JAN ERIC CARTWRIGHT
Attorney General of Oklahoma

DANNY K. SHADID
Assistant Attorney General
112 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-3921

Attorneys for Respondent

October, 1980

AFFIDAVIT OF SERVICE

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

I, Danny K. Shadid, depose and say that I am an attorney in the office of Jan Eric Cartwright, Attorney of record for the State of Oklahoma, respondent herein, and that on October _____, 1980, pursuant to Rule 33 of the Rules of the Supreme Court, I served three (3) copies of the foregoing brief by mailing the copies in a duly addressed envelope, with first class postage prepaid, to the following:

Stephen Jones
P. O. Box 3339
Enid, Oklahoma 73701
Attorney for Petitioner

All parties required to be served have been served.

_____
Danny K. Shadid

Subscribed and sworn to before me this _____ day of October, 1980.

_____
Notary Public

My Commission Expires:

_____

APPENDIX

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,	)	
v.	)	Case No. CRF-77-3144
HENRY EARL SHRIVER, Defendant.	)	

AFFIDAVIT OF ANDREW M. COATS

STATE OF OKLAHOMA	)	
	)	SS:
COUNTY OF OKLAHOMA	)	

Andrew M. Coats being first duly sworn upon his oath deposes and says:

1. I am the District Attorney of Oklahoma County, District No. 7, State of Oklahoma.

2. I was the lead counsel in the trial of the above captioned matter.

3. In preparation for trial of this matter and on Tuesday, the 7th day of February, 1978, I had a conference with Roy Melton who was to be a witness for the State. At that meeting, I asked Mr. Melton to tell me of every time he received any money from the defendant, Earl Shriver. Mr. Melton told me that he had received a loan from Mr. Shriver in 1969; that he had received $800.00 in cash in February, 1977; and that he received a $1,500.00 loan from Mr. Shriver in June, 1977. This was the first information I received about a $1,500.00 loan from Earl Shriver to Roy Melton in June of 1977. This information was obtained from Roy Melton in preparation for trial.

The question was asked primarily because at the Preliminary Hearing in this matter Mr. Stephen Jones, attorney for the defendant, had asked Mr. Melton on cross-examination about the loan of money from Shriver to Mel-

ton in 1969 and when the witness was not sure about the loan had produced a signed note evidencing such loan. In order to be sure that the State presented to the Court and jury all of the facts about the dealings between Melton and Shriver, I felt it was my duty to present not only the $800.00 cash payment from Shriver to Melton which the State considered was a bribe but also the two transactions which Melton and Shriver described as loans. These transactions were confirmed by Mr. Shriver in his testimony at trial as shown by the excerpts from the transcript of testimony presented herewith. I did not receive information concerning this $1,500.00 transaction between Shriver and Melton in June of 1977 from any other source.

4. At the trial of this matter and after I had asked Mr. Melton to list all of the transactions which he had had with Mr. Shriver, Mr. Jones interposed an objection and asked for an *in camera* hearing. At the *in camera* hearing, Mr. Jones asserted his claim that he had entered into some sort of agreement in regard to this June, 1977, transaction with Assistant District Attorneys Larry E. Joplin and James P. Laurence and with Oklahoma City Police Department Detectives Kenneth R. Smith and Charles Acox. After the hearing, I conducted an investigation to determine whether there was any truth to his assertions. I determined that no discussions were ever had by Mr. Jones with any of the above listed persons or any other person I could find in regard to a loan transaction between Shriver and Melton in June of 1977. I concluded, therefore, that Mr. Jones' allegations then and those which now appear in Paragraph 19 of the Motion for New Trial had and have no basis in fact. Therefore, I considered it proper to inquire about these matters from Mr. Shriver on cross-examination as shown by the excerpts from the transcript attached hereto.

(s) *Andrew M. Coats*
ANDREW M. COATS

[Certification omitted in printing]

[Caption omitted in printing]

AFFIDAVIT OF JAMES P. LAURENCE

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

James P. Laurence being first duly sworn upon his oath deposes and says:

1. I am an Assistant District Attorney for District No. 7, Oklahoma County, State of Oklahoma.

2. I was assigned to prepare for the trial of the above-captioned matter.

3. On February 3, 1978, a conversation was held in my office with Mr. Shriver's attorney, Stephen Jones, in regard to information required under a court discovery order and possible plea negotiations. During the course of this conversation, Assistant District Attorney Larry E. Joplin and Oklahoma City Police Department Sergeant Charles Acox joined Mr. Jones and me in my office. Mr. Jones informed us that Mr. Shriver would be interested in entering a plea in either a misdemeanor or to the felony charge with a recommendation for deferment of sentencing. Mr. Jones indicated that Mr. Shriver would then cooperate with this office in further investigation of the Oklahoma County Assessor's Office. Mr. Jones told us that Mr. Shriver could supply the "key" which would unlock the bribe scheme. Mr. Jones also said that Mr. Shriver could give us information relating to the involvement of other county officials; however, Mr. Jones did not specifically state that this information would relate to wrongdoing on the part of any one individual, only that the information would relate to the general scheme and how it operated in the Oklahoma County Assessor's office.

4. Mr. Jones told us that Mr. Shriver had paid a bribe to Roy Melton from some people in Little Rock, Arkansas

for tax considerations, that this payment had been by check, and, therefore, could be confirmed. Mr. Jones did not indicate whether this check came from the people in Little Rock or some other source and did not show it to us. Larry Joplin and I agreed not to use any information revealed in this conversation concerning this Arkansas bribe transaction in the case pending against Mr. Shriver.

5. During the week of February 6, 1978, a conference was held in Mr. Coats' office with Roy Melton. At this conference, Mr. Melton indicated that he had borrowed $1,500.00 from Mr. Shriver in May or June of 1977, and the payment was made by check. He said the purpose of the loan was to redeem tax certificates on property which he owned in Canadian County, Oklahoma. Mr. Melton indicated that this loan had been repaid. Mr. Shriver confirmed in his testimony that he had loaned Mr. Melton $1,500.00 in June of 1977.

6. I did not at anytime receive any information from Mr. Jones in regard to the $1,500.00 loan made by Mr. Shriver to Mr. Melton in June of 1977 and made no agreement with him in regard to that loan transaction.

(s) *James P. Laurence*
JAMES P. LAURENCE

[Certification omitted in printing]

[Caption omitted in printing]

AFFIDAVIT OF LARRY E. JOPLIN

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Larry E. Joplin being first duly sworn upon his oath, deposes and says:

1. I am an Assistant District Attorney for District Number Seven, and on February 3, 1978, I was present in James Laurence's office for a conversation with Mr. Laurence, Stephen Jones and Charlie Acox. During this conversation, Mr. Jones indicated that his client had information regarding bribery in the Oklahoma County Assessor's office. Mr. Jones said he would give us certain information to show his good faith in plea bargaining if the information would not be used against his client in his upcoming trial scheduled for February 8, 1978. I stated that it wasn't my case and of course I would not use it, but that he would have to talk to Mr. Laurence about that. Mr. Laurence said he wouldn't use it because he was ready for trial and didn't need anymore information on this charge.

2. At that point, Mr. Jones said that his client had acted as the pay-off man for a group of Little Rock, Arkansas businessmen who had bribed Roy Melton for certain tax benefits and that this could be proved by cancelled checks.

3. Shortly after this, I left Mr. Laurence's office. I never communicated this information to the District Attorney and have no knowledge of any $1500 transaction in June of 1977.

(s) *Larry E. Joplin*
LARRY E. JOPLIN

[Certification omitted in printing]

[APPENDIX]

[Caption omitted in printing]

AFFIDAVIT OF KENNETH R. SMITH

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Kenneth R. Smith being first duly sworn upon his oath, deposes and says:

1. I am a Lt. Detective with the Oklahoma City Police Department and have been so at all times pertinent herein.

2. On or about the 5th day of February, 1978, I had a conversation with Mr. Stephen Jones at his hotel regarding the case of The State of Oklahoma v. Henry Earl Shriver. Mr. Jones was asking us to ask the District Attorney to recommend a deferred sentence for Mr. Shriver. In return for our help, Mr. Jones stated that Mr. Shriver could furnish us a lot of information about transactions and dealings with the Oklahoma County Assessor's Office. The only other person in attendance at this meeting was Sergeant Charles Acox of the Oklahoma City Police Department.

3. The conversation dealt with a claim by Mr. Jones that Mr. Shriver could prove that Mr. Roy Melton had accepted money on other occasions in other transactions. Mr. Jones displayed a check which he claimed constituted a payment to Mr. Melton from Mr. Shriver.

4. We did not receive any information from Mr. Jones in regard to any loan transaction between Mr. Melton or Mr. Shriver occurring in June of 1977 and could not, therefore, have made any agreement with Mr. Jones in regard to any such information.

5. I did not communicate any information I received in that meeting to the District Attorney or to any members of his staff.

(s) *Kenneth R. Smith*
KENNETH R. SMITH

[Certification omitted in printing]

[Caption omitted in printing]

AFFIDAVIT OF CHARLES ACOX

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

Charles Acox first being duly sworn states:

1. I am a Detective Sergeant with the Oklahoma City Police Department and have been so at all times pertinent herein.

2. On February 3, 1978, I was present in Mr. James Laurence's office for a conversation between Mr. James Laurence, Mr. Stephen Jones and Mr. Larry Joplin.

3. Mr. Jones informed me, Larry Joplin and James Laurence that Shriver could supply the "key" which would unlock the Assessor's office bribe scheme. He informed us that Shriver could give us information relating to the involvement of other county officials. However, he did not specifically state that Shriver's information would relate the wrongdoing on the part of any one individual. It would relate to the general scheme and how it operated in the Assessor's office.

As evidence of the information that Shriver had access to, Jones informed us that Shriver had paid a bribe to Roy Melton from some people in Little Rock, Arkansas,

for tax considerations. He further stated that the payment was by check and therefore could be confirmed. There was no indication at that time as to whether this check came directly from Earl Shriver or from the people in Little Rock or from some other source. No check was offered for inspection at that time.

4. On or about the 5th day of February, 1978, I had a conversation with Mr. Stephen Jones at his hotel regarding the case of The State of Oklahoma v. Henry Earl Shriver. Mr. Jones was asking us to ask the District Attorney to recommend a deferred sentence for Mr. Shriver. In return for our help, Mr. Jones stated that Mr. Shriver could furnish us a lot of information about transactions and dealings with the Oklahoma County Assessor's Office. The only other person in attendance at this meeting was Lt. Kenneth R. Smith of the Oklahoma City Police Department.

5. The conversation dealt with a claim by Mr. Jones that Mr. Shriver could prove that Mr. Roy Melton had accepted money on other occasions in other transactions. Mr. Jones displayed a check which he claimed constituted a payment to Mr. Melton from Mr. Shriver.

6. We did not receive any information from Mr. Jones in regard to any loan transaction between Mr. Melton or Mr. Shriver occurring in June of 1977 and could not, therefore, have made any agreement with Mr. Jones in regard to any such information.

7. I did not communicate any information I received in that meeting to the District Attorney or to any member of his staff.

(s) *Charles Acox*
CHARLES ACOX

[Certification omitted in printing]